Party, Democracy and Representation:
The Political Consequences of Brexit

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The political impact of the 2016 referendum on the United Kingdom's membership of the European Union (EU) remains difficult to assess; for every set of political questions generated by the poll that has been resolved, further ambiguities have come into view. That the victory of the Leave campaign by the narrow margin of 52 per cent to 48 introduced a new divide into British politics is clear enough. Equally, the result ended the political career of David Cameron, who, as Prime Minister, had held the referendum in an attempt to unite a Conservative Party long divided on the issue of Europe, and to prevent a further rise in support for the Eurosceptic United Kingdom Independence Party (UKIP), led by the ubiquitous Nigel Farage.[1] Cameron, who campaigned for the UK to remain within the EU, resigned the morning after the vote.[2] Yet the wider significance of the referendum has proved harder to determine. The binary identities that emerged following the poll – Brexiters or Leavers for the victors, Remainers for their opponents – initially overlapped only imprecisely with existing political loyalties. Brexit plainly had the potential to upend electoral politics, yet the probable shape of the post-referendum realignment shifted constantly. If, at the 2019 general election, the Conservative Party secured its largest parliamentary majority since the 1980s, and its highest share of the vote since 1979, by appealing almost exclusively to Brexit supporters, this outcome was not always predictable.

The recourse to a referendum provided a further complication. There were, of course, precedents, not least the 1975 European referendum; other constitutional matters had been

[1] UKIP returned one MP at the 2015 general election, but received 3.8 million votes, almost 13 per cent of the total. See: Philip Cowley and Dennis Kavanagh, *The British General Election of 2015* (Basingstoke: Palgrave, 2016), pp. 49-56 and 372-4.
[2] Tim Shipman, *All Out War: The Full Story of Brexit* (London: Collins, 2017), pp. 451-3.

subject to popular votes in the intervening years.[3] Nevertheless, the 2016 poll differed from previous referendums in three key aspects. First, in contrast to the devolution referendums of 1979 and 1997, no detailed alternative to the status quo was offered. Second, the referendum produced conflicting verdicts in the constituent nations of the UK, with Scotland and Northern Ireland voting to Remain while England and Wales returned majorities for Leave, an outcome that cemented existing constitutional divisions. Third, the result created a conflict between the authority of a putatively sovereign parliament and the popular, if slender, mandate of the referendum.[4] Unlike in 1975, when parliamentary and public opinion had been in alignment, the 2016 referendum left a gulf between the electorate and their representatives, with the latter overwhelmingly in favour of continued EU membership.

Brexit's political impact was, then, not just electoral; rather, it brought into focus issues of representation, sovereignty and national identity, which had longer lineages than suggested by a consideration of the European referendum alone. The relationship between these questions provides the focus of this chapter. The analysis concentrates first upon the consequences of Brexit for 'high' politics, focussing on the key developments at a parliamentary level after 2016. The constitutional challenges raised by Brexit in a Scottish context are then explored.[5] The final section assesses the wider political context of the referendum, and the degree to which Brexit was an example of a broader trend towards forms of political 'populism'.

The electoral politics of Brexit

[3] Robert Saunders, *Yes to Europe! The 1975 Referendum and Seventies Britain* (Cambridge: Cambridge University Press, 2018); Vernon Bogdanor, *The New British Constitution* (Oxford: Oxford University Press, 2009), pp. 173-96.
[4] Martin Loughlin and Stephen Tierney, 'The Shibboleth of Sovereignty' (2018) 81(6) *Modern Law Review* 989-1016.
[5] The impact of Brexit in Wales and Northern Ireland is addressed in separate chapters.

Upon resigning, David Cameron declared that he would remain in office until the autumn to allow adequate time for a leadership contest; he was, however, replaced within weeks, as the selection of his successor descended into farce. The implosion of the candidacies of Boris Johnson, the former Mayor of London and a leading figure in the Vote Leave campaign, and Andrea Leadsom, a junior minister and another key Brexit supporter, allowed Theresa May, the former Home Secretary, to win by default; May entered office on 13 July 2016, less than three weeks after the referendum.[6] In retrospect, after her shortcomings as Prime Minister became obvious, May's avoidance of the scrutiny of a leadership contest assumed a certain significance. Yet it is easily forgotten how popular May was in the early months of her premiership, and not just with Conservatives. Having quietly supported Remain, May pivoted swiftly, appointing convinced Brexiteers to key cabinet positions: Boris Johnson became Foreign Secretary; Liam Fox received the International Trade portfolio; David Davis headed the new Department for Exiting the EU (DexEU). Supported by her longstanding advisors Fiona Hill and Nick Timothy, May also began to outline a new Conservative ethos that repudiated the economic austerity and social liberalism of the Cameron era. In her inaugural speech as Prime Minister, May announced her desire to tackle inequality in all its forms; she would, she declared, always prioritise the interests of the 'just managing' over the 'privileged few', an obvious criticism of the atmosphere of easy elitism that had surrounded her predecessor.[7]

May's appeal to working and lower middle-class voters was a response to the political divisions revealed by the referendum. In both England and Wales, a majority had backed leaving the EU, with the referendum prompting a higher than usual turnout. There were,

[6] Nicholas Allen, 'Gambling with the Electorate: The Conservatives in Government' in Nicholas Allen and John Bartie (eds), *None Past the Post: Britain at the Polls, 2017* (Manchester: Manchester University Press, 2017), pp. 14-16.
[7] Statement from Theresa May, 13 July 2016. https://www.gov.uk/government/speeches/statement-from-the-new-prime-minister-theresa-may

however, striking geographical disparities in the result, with the Leave vote higher in the English regions.[8] Support for Brexit also correlated closely with age, income, educational background, and ethnicity; Leave voters were, overall, likely to be older, white, less wealthy, and to not have attended university.[9] While such generalisations obscured the substantial middle-class Leave vote, for May and her team Brexit pointed nonetheless to a fundamental political realignment that would allow the Conservatives to construct a genuine mass appeal. The influence of Nick Timothy was important: for Timothy, the Conservatives should seek to foreground patriotism and social conservatism and reject an unthinking celebration of the free market in favour of intervening to protect workers and consumers.

This interpretation of Brexit was evident in the speeches May delivered at her first conference as Conservative leader. The first affirmed her commitment to delivering Brexit: she announced that she would invoke Article 50 of the Lisbon Treaty by 31 March 2017, starting the two-year process of leaving the EU. May also declared that Brexit would require the UK to enjoy full control over immigration policy, and to no longer be subject to the jurisdiction of the European Court of Justice; although left unstated, in practice this would mean leaving the Single Market.[10] May's second speech was an attempt to situate Brexit within her broader domestic political vision; the diplomatic and constitutional implications scarcely featured. For May, the referendum had uncovered a feeling that society was run in the interests of the 'privileged few'; support for Brexit 'was a vote not just to change Britain's relationship with the European Union, but to … change … the way our country works — and the people for whom it works — forever.' Those in 'positions of power' who identified more 'with international elites than with people down the road', who found

[8] Will Jennings and Gerry Stoker, 'The Divergent Dynamics of Cities and Towns: Geographical Politics and Brexit' (2019) 90(S2) *Political Quarterly* 155-66.
[9] Matthew Goodwin and Oliver Heath, 'The 2016 Referendum, Brexit and the Left Behind: An Aggregate-level Analysis of the Result' (2016) 87(3) *Political Quarterly* 323-32.
[10] *Financial Times*, 2 October 2016.

'patriotism distasteful' and 'concerns about immigration parochial', were criticised; to hold such views, May claimed in a soon infamous line, was to be a 'citizen of nowhere'.[11] This analysis was, in some respects, perceptive. Likewise, to prioritise ending free movement was, given the prominence of immigration in the Leave campaign, at least comprehensible, whatever its moral or economic merit. Certainly, the political coherence of May's position was irrefutable: Brexit would provide the impetus for a wider renewal of Conservatism, easing the return of former supporters lost to UKIP, while appealing to traditional Labour voters in the English regions.

The politics were, though, impeded by legal and constitutional complexities. In November 2016, the English High Court ruled on a case brought by the activist Gina Miller, declaring that a parliamentary vote would be required to trigger Article 50 and rejecting the government's position that the executive's prerogative powers were sufficient; the decision was endorsed by the Supreme Court in January 2017. Politically, the case was a charade: the government expected to lose, but persisted since doing so mollified Eurosceptic opinion within the Conservative Party and the media.[12] Further, the ruling was, in the short term, not significant: the necessary legislation was passed within weeks, meeting the government's self-imposed deadline. Nonetheless, the case did hint at the difficulties ahead. While May continued to interpret Brexit in a manner that would preclude membership of the Single Market or Customs Union, the controversy regarding Article 50 had confirmed the presence of a group of influential Conservative MPs who wished the UK to retain these affiliations as part of a so-called 'soft' Brexit. Having inherited a Commons majority of just twelve, May was faced with the possibility that her Brexit proposals might fail in the Commons. If such concerns provided one incentive for May to call an election, straightforward partisan interest

[11] *Financial Times*, 5 October 2016.
[12] Tim Shipman, *Fall Out: A Year of Political Mayhem* (London: Collins, 2017), pp. 114-17.

offered another. Since the referendum, opinion polls had consistently given the Conservatives a comfortable lead over the Labour Party; May's personal ratings were even stronger. Further encouragement came with the Conservative victory at the February 2017 Copeland by-election, the first mid-term gain by a governing party since 1982.[13] Unsurprisingly, in April 2017 May announced that she intended to call an election. The 2011 Fixed-Term Parliaments Act, a relic of the coalition era that required a two-thirds Commons majority for an early dissolution, proved no obstacle.

From a constitutional perspective, the 2017 election reversed previous custom: voters were effectively being asked to endorse, via a general election, a specific interpretation of a referendum result. Politically, the scale of the Conservative lead in the polls encouraged a belief too that the election would enable a lasting political reorientation. The election result, which saw the Conservatives lose their majority, and continue in office only with the support of the Democratic Unionist Party, the dominant political representatives of Northern Ireland's unionist community, was therefore a bitter disappointment. Further, the importance of the border between the UK and the Republic of Ireland in negotiations with the EU made an explicit alliance with Ulster unionism deeply controversial. May's standing within her party never recovered; her key aides, Hill and Timothy, already disliked by many within the party for their abrasive style, were forced to resign; the belief that Brexit was an opportunity to craft a more interventionist Conservatism left with them.

The Conservative failure in 2017 was, at a basic level, May's responsibility. The campaign exposed weaknesses in her judgement, most obviously in relation to the proposed changes to the funding of elderly care, a policy abandoned mid-campaign in a humiliating U-turn. Indeed, May's limitations as a leader defined the campaign, at least for the press. While

[13] Allen, 'Gambling with the Electorate', pp. 22-3.

never a charismatic performer, prior to the election her diligent and modest public persona seemed well-suited to the prevailing political mood. During the election, however, May appeared increasingly ill at ease in public; her refusal to participate in the leaders' debates was telling. Certainly, the decision to build the Conservative appeal around her alleged attributes was mistaken.[14] But the media obsession with May's flaws reflected a tendency, visible throughout the post-referendum period, to overstate the role of party leaders, and to neglect deeper political changes.[15] May's belief that Brexit could be used to reunite the political right was borne out: UKIP's support vanished, while the Conservatives polled over 42 per cent nationally, the party's highest share of the vote since 1983; in England, that figure reached almost 46 per cent. The issue was the failure to translate this support into seats: the Conservative vote rose in many Labour-held constituencies, but not by enough to oust the incumbent. This was accentuated by the surprisingly robust performance of the Labour Party; one unexpected consequence of Brexit was a short-lived revival of two-party politics, in England at least.

After defeat at the 2015 election, which prompted the resignation of Ed Miliband as leader, the Labour Party was in seeming disarray. Despite his popularity with party members and activists, Miliband's successor, the veteran left-wing MP Jeremy Corbyn, enjoyed little support from a Parliamentary Labour Party (PLP) deeply suspicious of his stance on defence and foreign policy. Brexit only exacerbated these rifts. Although, he had, like the majority of the PLP, publicly supported Remain, Corbyn was accused of having failed to campaign with sufficient enthusiasm. Corbyn's history as a left-wing critic of the EU hardened such doubts, as did his call for Article 50 to be activated immediately. There followed a coordinated series of shadow cabinet resignations, and a vote of no confidence in Corbyn's leadership by the

[14] Shipman, *Fall Out*, pp. 241-6.
[15] See the post-election commentary in: *The Economist*, 10 June 2017; *The Observer*, 11 June 2017.

PLP, passed by a margin of four to one. Nevertheless, Corbyn, sure his mandate came from the membership rather than MPs, refused to resign, and easily fended off a subsequent leadership challenge.[16]

Where Brexit had offered Conservatives an opportunity, for Labour it appeared as a threat to party unity. While most Labour voters had supported Remain, a minority had backed Leave; the electoral significance of the latter group blurred existing internal divisions. While some on the left were critical of the EU, the firmest believers in honouring the referendum result were MPs on the right of the PLP, unsympathetic to Corbyn, but who represented constituencies where a majority had voted for Brexit. Conversely, the left-wing members committed to Corbynism defended the principle of free movement, and tended to advocate softening, or even reversing, Brexit. The leadership's downplaying of the European question in favour of economic issues indicated, perhaps, a rarely credited degree of political wisdom, since it diminished internal tensions while blunting Conservative attempts to poach pro-Brexit Labour voters. It echoed too May's sense that the Brexit vote was driven by domestic discontents. Of course, Corbyn, and the astute shadow Chancellor John McDonnell, opted to portray Brexit as a rejection of the austerity programme imposed by the Conservative-Liberal Democrat coalition between 2010 and 2015.

Labour's electoral prospects in 2017 appeared bleak: dire opinion poll forecasts were seemingly confirmed by the disastrous results of the May 2017 local elections. Yet at the general election Labour polled 40 per cent of the vote, up 10 points on 2015, gaining 30 seats and preventing a Conservative majority. The result partly reflected the campaign, where Corbyn, unlike May, had thrived. Labour's unabashedly left-wing manifesto, which promised the abolition of university tuition fees, investment in public services, and large-scale

[16] Thomas Quinn, 'Revolt on the Left', in Allen and Bartie (eds), *None Past the Post*, pp. 34-53.

nationalisations, proved popular with younger voters and those weary of austerity. But a studied vagueness on Brexit helped too, checking Conservative progress in the north of England while, at the same time, allowing Labour to benefit from tactical voting by opponents of Brexit. In urban and southern England former Liberal Democrat and Green supporters backed Labour on this basis, delivering surprise victories in seats such as Canterbury and Kensington and Chelsea. Indeed, the failure of the Liberal Democrats to become the party of Remain, despite calling for a confirmatory referendum on the final Brexit deal, proved crucial, with progressive voters unwilling to overlook the party's record in office during the coalition years. The election also entrenched the generational gulf present during the referendum: exit polls revealed that voters under the age of 45 overwhelmingly backed Labour over the Conservatives; the picture was reversed for those over 45.[17]

For Conservatives, although still in office, the election resembled a defeat; for the left, meanwhile, it felt something like a victory. In the summer of 2017, it was Labour that enjoyed a sense of momentum, with the party having mobilised a new electoral alliance. Certainly, it seemed implausible that May could continue as Prime Minister, especially following the tragic fire at Grenfell Tower, a residential tower block in Kensington, a week after the election, that resulted in 72 deaths. May's inept response to the disaster reinforced the perception that she was ill-suited to the role of Prime Minister. May would, however, survive in office for a further two years, and the Conservatives, led by her successor, Boris Johnson, would win a comfortable majority at the December 2019 general election. The ability of the Conservatives to retain power rested, paradoxically, upon an inability to secure a Brexit deal that could command parliamentary support. The negotiating position adopted by Theresa May, elaborated in July 2018, was rejected by pro-Brexit Conservatives, who

[17] Peter Dorey, 'Jeremy Corbyn confounds his Critics: Explaining the Labour Party's remarkable resurgence in the 2017 election' (2017) 17(3) *British Politics* 308-34.

objected to the proposed ‘common rulebook’ for goods, which would have required key sectors of the UK economy to remain in close regulatory alignment with the EU. Unwilling to support May’s proposals, David Davis and Boris Johnson resigned from the Cabinet.[18] The Withdrawal Agreement eventually concluded with the EU in November 2018 faced similar opposition, and prompted the resignation of Dominic Raab, Davis’s successor at DexEU.[19] The following month, the government suffered a series of humiliating parliamentary defeats as MPs demanded more influence over the final Brexit deal; May survived an internal confidence vote only after promising that she would not contest another election.[20] By March 2019, with the Commons having repeatedly rejected both the deal negotiated by May and the possibility of a no-deal Brexit, the government was forced to seek an extension to the deadline for negotiations imposed by Article 50, due to expire at the end of March 2019.

Unable to deliver Brexit, May’s humiliation was complete; she announced her departure in May 2019. The delays provided, though, the basis for the eventual electoral victory enjoyed by Boris Johnson, who replaced May in July 2019. Between 2017 and 2019 the debate over Brexit became increasingly polarised. For many Brexit supporters, the lack of progress was evidence of the recalcitrance of an establishment that had, from the outset, refused to accept the referendum result; the performance of the Brexit Party, Nigel Farage’s post-UKIP vehicle, at the 2019 European elections demonstrated the potency of such sentiments. Similarly, by 2019 opponents of Brexit had become more confident of revisiting the decision: the early concern with ensuring parliamentary oversight of the negotiations was replaced by calls for a second referendum, notably with the launch of the People’s Vote campaign in early 2018. Such developments shielded the Conservatives from the

[18] HM Government, *The Future Relationship between the United Kingdom and the European Union* (Cm 9593, 2018).
[19] *The Guardian*, 9 July and 15 November 2018.
[20] *The Guardian*, 5 and 13 December 2018.

consequences of their own failures; instead, any setbacks could be attributed to alleged efforts to frustrate Brexit. May had flirted with this narrative; with the arrival of Johnson and his chief advisor, the former Vote Leave strategist Dominic Cummings, it became the basis of government policy.[21] A series of confrontations with parliament were contrived, with the aim of hardening public perceptions that the political establishment was blocking Brexit; the whip was removed from 21 Conservative MPs who voted against the government and an attempt was made to prorogue parliament, although this was ultimately overturned by the Supreme Court. Johnson eventually goaded his opponents into granting him the election he wanted. It was contested by the Conservatives on the brutally simple promise that they would 'Get Brexit Done'; there was little sense of any broader political vision. While the Conservative vote increased only marginally, Johnson, aided by the decision of the Brexit Party not to contest Conservative-held seats, achieved the electoral breakthrough that eluded May, winning a swathe of traditional Labour seats in the north of England and securing a majority of 80.[22] A revised version of the Withdrawal Agreement was passed, and the UK formally left the EU on 31 January 2020.

Critics of Brexit were hampered by an inability to agree on an alternative. Instead, positions and alliances constantly shifted; there was even the launch of a short-lived new party, Change UK, established in early 2019 by disillusioned pro-remain Labour and Conservative MPs.[23] By the 2019 election, the Liberal Democrats had abandoned calls for a second referendum in favour of claiming that they would simply revoke Article 50.[24] The Liberal Democrat stance was, despite the ambitious claims of the party's leader, Jo Swinson,

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[21] Meg Russell, 'Brexit and Parliament: The Anatomy of a Perfect Storm', (2020) *Parliamentary Affairs*. Published online 11 June 2020.
[22] David Cutts et al., 'Brexit, the 2019 General Election and the realignment of British Politics' (2020) 91(1) *Political Quarterly* 7-23.
[23] Change UK dissolved after the 2019 election.
[24] *Stop Brexit, Build a Brighter Future: Liberal Democrat Manifesto 2019* https://www.libdems.org.uk/liberal-democrats-2019-manifesto

irrelevant. Nevertheless, the policy shift was indicative of a wider rejection of compromise. This absolutism was most challenging for the Labour Party, which needed both Leave and Remain voters. For Labour it would have been preferable had May been able to pass her deal, removing the need to engage with the debate over a second referendum; being forced to fight another election while Brexit remained unresolved was an unwelcome outcome. The artful ambiguities of 2017 could not be reprised; with pro-Remain voices gaining ground in the party, especially the shadow Brexit secretary Keir Starmer, and the shadow Foreign secretary, Emily Thornberry, Labour contested the election committed to an impenetrable policy that involved negotiating a new Brexit deal, but which would then be put to a referendum alongside a remain option.[25] The coalition assembled in 2017 dissolved; Labour's vote share fell to 32 per cent, and the party's parliamentary representation slumped to its lowest level since the 1930s.

Brexit dominated UK politics after 2016; still, in the aftermath of the 2019 election, it was striking just how ephemeral much of the debate proved to be. For all the tumult, politics evolved in a direction that was, in hindsight, discernible before the referendum. The exception was the disappearance of UKIP, left purposeless once Leave had won; the Conservatives are now the party of Brexit, and have absorbed much of UKIP's former base. For Labour, the 2017 result looks now to have been an anomaly, one reliant upon too many contingencies to be easily replicated. The party struggles to contest the dominance of the Conservative Party in England and has done for half a century: since 1970, Labour has polled above 40 per cent of the vote in England at only three general elections: 1997, 2001 and 2017. The confusion over the party's Brexit position; Corbyn's unpopularity with large parts of the electorate; the controversy surrounding allegations of anti-Semitism within the party: all were, no doubt, damaging. But the 34 per cent polled by Labour in England in 2019 was

[25] *It's Time for Real Change: The Labour Party Manifesto 2019* https://labour.org.uk/manifesto-2019/

just below the 2005 result, when Tony Blair had been returned for a third term, and higher than was accomplished by either Gordon Brown in 2010 or Ed Miliband in 2015. Shifting demographics have accentuated this long-term weakness by concentrating Labour voters in fewer, predominantly urban, seats. It is not just that Labour voters have become younger or more likely to have attended university; there are now fewer Labour voters in the seats the party needs to win. In the northern English constituencies targeted successfully by the Conservatives in 2019, for example, the electorate has become markedly older since the late 1990s.[26] Labour's English problems were, of course, compounded by the party's collapse in Scotland; this too, however, predates Brexit.

Brexit highlighted the divergent political cultures across the nations of the UK, but it did not create them. An English identity, anti-metropolitan, Eurosceptic and anti-immigration in inclination, had been gaining in political influence since the 1990s, and especially following the extension of free movement of labour to the new eastern European EU member states in 2004, a key moment in the rise of UKIP.[27] Once the referendum had been held, Conservatives were always going to be more comfortable with the sentiments underlying the Leave vote, and better placed to appeal to an explicitly English identity.[28] Of course, by confirming the reality, and the power, of a distinctive English politics, Brexit posed a serious challenge to the constitutional integrity of the UK.

Brexit and the Anglo-Scottish Union

[26] *2019 Election Review* (London: Labour Together, 2020), p. 55 https://www.labourtogether.uk/review
[27] Michael Kenny, 'The Return of "Englishness" in British Political Culture: The End of the Unions?' (2015) 53(1) *Journal of Common Market Studies* 35-51; Ailsa Henderson et al., 'England, Englishness and Brexit' (2016) 87(2) *Political Quarterly* 187-99; Helen Thompson, 'Inevitability and Contingency: The Political Economy of Brexit' (2017) 19(3) *British Journal of Politics and International Relations* 434–49.
[28] Andrew Gamble, 'The Conservatives and the Union: The "New English Toryism" and the Origins of Anglo-Britishness' (2016) 14(3) *Political Studies Review* 359-67.

In Scotland, the debate over the UK's relationship with the EU landed in a political landscape where, following the 2014 referendum on Scottish independence, constitutional questions were already central to politics. Although in 2014 a majority had voted to remain part of the UK, the 'Yes' campaign had polled 45 per cent, creating a substantial pro-independence constituency inclined towards the Scottish National Party (SNP). At the 2015 general election, the SNP gained almost half the popular vote in Scotland, winning an extraordinary 56 of Scotland's 59 Westminster seats; Labour's long era of dominance in Scotland was over. The SNP had also retained a leading position at the Scottish Parliament, where it had held power since 2007; although the May 2016 Scottish Parliamentary elections saw the SNP lose the outright majority gained in 2011, there was still, with the support of the Scottish Greens, a pro-independence majority at Holyrood.[29]

At the 2016 election the SNP had pledged to demand a second independence referendum were there to be a 'material change in the circumstances that prevailed in 2014'.[30] The result of the EU referendum surely met this criterion: Scots supported EU membership by a margin of 62 per cent to 38, but faced being forced to leave on the basis of the results in England and Wales; a further irony was that the prospect of a newly independent Scotland being required to reapply for EU membership had been an important plank in the pro-Union campaign in 2014. But the way in which Brexit interacted with the debate over Scottish independence was complex, and, at times, counterintuitive. Outwardly, the divergent verdicts recorded across the UK in 2016, and the SNP's official commitment to EU membership, vindicated assertions that Scottish interests were not adequately represented at Westminster. But if Brexit unquestionably deepened the constitutional conflicts left unresolved after 2014, it would, nevertheless, be wrong to straightforwardly equate support for independence with a

[29] Paul Cairney, 'The Scottish Parliament Election 2016: another momentous event but dull campaign' (2016) 25(3) *Scottish Affairs* 277-93.
[30] *Re-Elect: SNP Manifesto 2016*, p. 24 d3n8a8pro7vhmx.cloudfront.net

belief in European integration. While the overlap between these stances was significant, it was not total; further, Brexit complicated as much as strengthened the case for Scottish independence.[31]

From the outset, Nicola Sturgeon, the First Minister of Scotland and leader of the SNP, insisted that the 'stark divergence in democratic will between the different nations of the United Kingdom' had to be recognised and called for Scotland to at least be allowed to remain within the European Single Market, even if England and Wales exited.[32] Yet this position concealed important divisions within the pro-independence movement. Although precise assessments were difficult, polling suggested that as many as one in three SNP supporters had voted to leave the EU.[33] A concern for sovereignty and a desire to be free from the influence of both London and Brussels may well offer some explanation, but the SNP's history, and its traditional sources of support, were also relevant. Until the late 1980s, the SNP had instinctively mistrusted European integration, fearing its implications for smaller nations.[34] Traces of this scepticism were clearly still present within sections of the party's base. Further, prior to the early twenty-first century, the SNP had enjoyed greatest success in the largely rural constituencies of central and eastern Scotland. Although no Scottish constituency recorded a majority in favour of Brexit, it was in the SNP's north-east heartlands that the Leave campaign performed best: in Moray, then represented by the SNP's Commons leader Angus Robertson, Leave polled 49.9 per cent. In such constituencies it was by no means evident that voting for the SNP signified agreement with the party's policy on Europe, or even on Scottish independence.

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[31] Nicola McEwen, 'Brexit and Scotland: Between Two Unions' (2018) 13(1) *British Politics* 65-78.
[32] *Scotland's Place in Europe* (Edinburgh: Scottish Government, 2016), p. vi.
[33] *Glasgow Herald*, 6 December 2016.
[34] Andrew D. Devenney, 'Regional Resistance to European Integration: The Case of the Scottish National Party' (2008) 33(3) *Historical Social Research* 319-45.

More than this, in Scotland Brexit was a secondary issue, one viewed in terms of its relationship to the debate over Scotland's constitutional status, a hierarchy confirmed by the 2017 election. What might have been understood as the centre-ground of Scottish politics – pro-UK and pro-EU – was embodied best by the Liberal Democrats; the party's vote flatlined as it finished in fourth place. Instead, the election was dominated by the question of how many seats the SNP would hold, and whether Labour or the Conservatives would become the principal voice of pro-Union Scots. On the latter issue, it was the Conservatives who performed better, returning thirteen MPs after two decades in which the election of a single Scottish representative was considered a success, a result that proved vital to the party remaining in government. Admittedly, the Scottish Conservatives were, under the leadership of Ruth Davidson, more pro-European than their English and Welsh colleagues. It was, though, perhaps telling that their most notable successes came in the northeast, where Conservative candidates ousted both Angus Robertson, defeated in Moray, and Alex Salmond, Sturgeon's predecessor as SNP leader and the architect of the 2014 referendum, who lost in Gordon. Here a rejection of Scottish independence possibly blended with a traditional Euroscepticism.

For the SNP, while Brexit allowed the argument for a second independence referendum to be advanced in some respects, it also presented significant challenges. The 2017 election made clear that opposition to Brexit simply did not inspire the same level of popular enthusiasm as independence. The party's representation at Westminster fell from 56 to 35, in part as a result of tactical voting by opponents who had learned the lessons of 2015, but principally due to a sharp fall in turnout. Between 2015 and 2017, the SNP shed almost half a million votes; overall turnout in Scotland fell from 71 per cent to 66 per cent, in contrast to the increased participation witnessed in England and Wales. The political impact

of Brexit was thus uneven across the UK; for a Scottish electorate already realigning around poles generated by a constitutional referendum, the question of Europe was subordinate.[35]

Nonetheless, Brexit did affect political and constitutional debates in Scotland in two important ways. First, Brexit effectively ended the viability of the independent Scotland envisioned by the SNP in 2014. The SNP had portrayed independence as transformative yet strangely undisruptive: common membership of the EU was a vital part of this prospectus, suggesting that political independence could be achieved without any interruption to flows of goods, services, or people. The white paper produced by the Scottish Government prior to the referendum argued that while independence would end the 'parliamentary union', it would 'not affect the many other ties that bind Scotland to the other nations of the UK'; an independent Scotland would remain part of 'five continuing unions': the EU; the Union of the Crowns; a currency union, in which Scotland would continue to use Sterling; NATO; and a social union 'made up of connections of family, history, culture and language'.[36] Brexit obviously threatened the first of these unions, suggesting that an independent Scotland might faces similar border issues as Brexit had created on the island of Ireland. Similarly, the notion of a currency union, already a critical weakness in the SNP's case in 2014, looked even more implausible after Brexit, since it was hardly compatible with the ambition that an independent Scotland would seek to re-join the EU.

Second, and perhaps most significantly, Brexit raised questions about the stability of the devolved constitutional settlement. The Scottish Parliament was, in one sense, a legislative creation of the UK parliament, which, while it enjoyed competence over all matters not explicitly reserved, remained formally subordinate to the still sovereign

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[35] Gerry Hassan, 'After the Landslide: Scotland still Marches to a Different Politics, only slightly less so' (2017) 88(3) *Political Quarterly* 375-81.

[36] *Scotland's Future: your guide to an independent Scotland* (Edinburgh: Scottish Government, 2013), pp. 214-15.

Westminster parliament.[37] The authority of the devolved Parliament had, however, been buttressed by the overwhelming endorsement that the devolution proposals received in the 1997 referendum. The decision to hold a referendum reflected the Parliament's roots in the cross-party Campaign for a Scottish Assembly (CSA), formed following the failed 1979 devolution referendum. In 1988, as part of the creation of the Constitutional Convention that would eventually produce the blueprint for the devolved parliament, the CSA published the Claim of Right, a forthright assertion, or invention, of a Scottish tradition of popular sovereignty.[38] Devolution's mandate was thus twofold, part-legislative, part-popular, and after an unsteady start the Parliament was recognised as Scotland's principal representative institution. It was, then, with some justification that the Scottish Government demanded it be granted a formal role in the Brexit negotiations as the voice of a distinctive Scottish polity.

Devolution had, however, arrived at a time when EU membership was assumed to be a permanent part of the constitutional backdrop. The Scottish Parliament's legislative competence was circumscribed by a requirement to comply with EU law, a measure that limited divergence between UK jurisdictions; Brexit threatened to remove this guardrail.[39] There was, in addition, ambiguity over how competences that had resided at the European level would be distributed after Brexit; the stated desire of the UK government to ensure that a UK 'internal market' operates post-Brexit promises to be a continued source of constitutional tension.[40] The manner of the Conservative government's pursuit of Brexit created further concerns regarding the status of the Scottish Parliament. Following the 2014 independence referendum, the UK government had established the Smith commission to examine the case for devolving further powers to Holyrood. The commission's

[37] Scotland Act 1998, s. 28(7).
[38] Roger Levy, 'The Scottish Constitutional Convention: Nationalism and the Union' (1992) 27 *Government and Opposition* 222–34; James Mitchell, *The Scottish Question* (Oxford: Oxford University Press, 2014), chapter 10.
[39] Scotland Act 1998, s. 29(2)(d).
[40] *Financial Times*, 13 July 2020.

recommendations, which centred upon extending the Parliament's fiscal powers, formed the basis of the Scotland Act 2016, passed three months prior to the EU referendum.[41] The legislation began with an assertion that the devolved Parliament was 'a permanent part of the United Kingdom's constitutional arrangements', and could not be 'abolished except on the basis of a decision of the people of Scotland voting in a referendum.' This was followed by statutory recognition of the Sewel convention, under which the UK Parliament agreed to 'not normally legislate with regard to devolved matters without the consent of the Scottish Parliament'.[42]

Ostensibly, the 2016 Act placed the devolved institutions beyond the reach of partisan politics, and, indeed, of the sovereign authority of Westminster: the Parliament's popular mandate trumped its statutory basis. Brexit, however, posed an immediate challenge to any such assumptions. The Miller case, although principally concerned with whether parliamentary approval was required to trigger Article 50, had seen contributions from the devolved administrations, who argued that the Sewel convention applied to the process of leaving the EU, since this would affect devolved matters. The Supreme Court ruled that this was not the case: leaving the EU was a reserved matter, and Sewel did not apply. Nevertheless, the Court's ruling, while ambiguous, suggested that it viewed Sewel as a political convention that was not justiciable.[43] There remained, then, questions over the true value of the 2016 Act. If the guarantees offered to the Scottish Parliament were political rather than legal, they depended upon the UK government recognising such limits. The post-referendum conduct of the Conservative government provided few assurances.

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[41] *The Smith Commission, Report of the Smith Commission for Further Devolution of Powers to the Scottish Parliament* (London: The Smith Commission, 2014).

[42] Scotland Act 2016, s. 1 and s. 2. See: Chris Himsworth, 'Legislating for Permanence and a Statutory Footing' (2016) 20(3) *Edinburgh Law Review* 361-7; Aileen McHarg and James Mitchell, 'Brexit and Scotland' (2017) 19(3) *British Journal of Politics and International Relations* 512-36.

[43] Tom Mullen, 'The Brexit Case and Constitutional Conventions' (2017) 21(3) *Edinburgh Law Review* 442-7.

At a UK level, Brexit had accelerated existing political trends rather than diverting them; yet in Scotland the European referendum functioned, in effect, as a constraint on political progress. Conducted in the shadow of 2014 and interpreted in that context, Brexit still precluded any attempt to move beyond the constitutional stalemate that followed the independence referendum. Scottish politics remains in the mould set prior to 2016: the SNP's dominance was reasserted at the 2019 election, with the party's Westminster representation increasing from 35 to 48; the SNP's share of the Scottish vote rose from 37 to 45 per cent. Likewise, while the number of Scottish Conservative MPs fell from thirteen to seven, the party is still the principal opposition to the SNP, with the Labour Party continuing to struggle in Scotland.[44] Only a second independence referendum can alter that picture, but with the shape of the final post-Brexit relationship between the UK and EU still to be settled and the UK government refusing to consider the Scottish Government's calls for a further independence poll, this seems unlikely to take place until after the 2021 Holyrood elections. So much happened in Scottish politics between 2016 and 2019, yet so little changed.

Brexit, Populism and the People

The electoral and constitutional impact of Brexit was principally to reinforce tendencies apparent prior to 2016; still, the broader consequences for political culture and understandings of representation were significant, chiefly since the victory of the Leave campaign was such a shock to the political establishment. While there had, since the 1990s, been a significant Eurosceptic element in British politics, particularly among Conservative politicians and their allies in the print media, there was little expectation that these voices

[44] Malcolm Harvey, 'A Dominant SNP in a Unionist Scotland? The 2019 General Election in Scotland' (2020) 91(1) *Political Quarterly* 56-60; Ailsa Henderson, Rob Johns, Jac Larner and Chris Carman, 'Scottish Labour as a case study in party failure: Evidence from the 2019 UK General Election in Scotland' (2020) 29(2) *Scottish Affairs* 127-40.

would be able to overcome the consensus in favour of continued EU membership that prevailed among the leadership of all the major parties, and, indeed, among most of the key institutions of British public life. Brexit thus produced a sense of political dislocation, of vertigo; in the summer of 2016 it felt, especially for those on the losing side, that British politics had been shunted abruptly onto a different, unrecognisable, path. As one prominent liberal commentator wrote on the morning after the referendum, Britons had ‘woken up in different country … This is not the country it was yesterday. That place has gone for ever.’[45]

For those occupying the centre of British politics, there was a persistent sense of regret that David Cameron had allowed the UK’s position in the EU to be risked in such a manner. Underlying such judgements was a dislike of the mechanism of the referendum, considered a blunt constitutional instrument ill-suited to settling complex issues that could not be reduced to a binary proposition. Used in such a manner, direct democracy, it was felt, encouraged the polarisation of the electorate.[46] This analysis, alongside the closeness of the 2016 result, encouraged portrayals of Britain as a deeply divided society, with Leave and Remain signifying competing and incompatible worldviews. The alternative labels suggested varied – ‘Brexitland’ versus ‘Londonia’; ‘Closed’ versus ‘Open’; ‘Somewheres’ versus ‘Nowheres’ – but the premise was consistent. Brexit had revealed the divisions between the beneficiaries of globalisation, who tended to be middle class, university-educated and reside in major cities, and the economically left behind, located predominantly in declining provincial towns and rural areas, who experienced open markets and immigration as threats to stability and employment, and who held more conservative social views.[47]

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[45] Jonathan Freedland, ‘We have woken up in a different country’, *The Guardian*, 24 June 2016.
[46] See the revealing article by Peter Mandelson, a key Labour figure in the Blair era and prominent supporter of Remain: *Financial Times*, 2 July 2016.
[47] *The Economist*, 2 and 30 July 2016; David Goodhart, *The Road to Somewhere: The Populist Revolt and the Future of Politics* (London: C. Hurst & Co., 2017).

Brexit, in consequence, came to be read as a British example of the populist politics believed to be gaining influence in many democracies: according to the *Economist* 'chunks of the British electorate' were 'now in thrall to an angry populism'.[48] Anti-elitist, anti-immigration, nationalist and protectionist in its rhetoric, this populism rested upon a claim to speak for the people, an ability to channel the voice of the 'true' nation, alleged to have been ignored by an aloof and self-serving establishment. While there were other, and perhaps better, comparisons available, the most frequent analogy for British commentators was with Donald Trump's unexpected political rise in the United States; Trump seized the Republican presidential nomination in the month before Brexit, going on to win a shock election victory in November 2016 on an aggressively chauvinistic and anti-free trade platform. This wider context heightened fears that Brexit might curdle into something more openly xenophobic and authoritarian.[49]

There was, to be sure, some substance to these fears. Although similarities between the UK and United States can be exaggerated, there were commonalities. Perhaps most striking was the growing centrality of social media in political campaigning. It was evident that, like Trump, the Leave campaign had exploited Facebook and Twitter, and there was unease that claims made on these platforms were not subject to the same regulation and accountability as traditional methods of political advertising, amid allegations of illegality and Russian interference in both the UK and the United States.[50] There were anxieties too that the rise of online campaigns was creating a more emotive, volatile, even nihilistic

[48] *The Economist*, 25 June 2016, p. 11.

[49] Studies of populism flourished after 2016. See: for example: Roger Eatwell and Matthew Goodwin, *National Populism: The Revolt Against Liberal Democracy* (London: Pelican, 2018); Jan-Werner Muller, *What is Populism?* (Philadelphia, PA: University of Pennsylvania, 2017); Cas Mudde, *Populism: A Very Short Introduction* (Oxford: Oxford University Press, 2017); Pippa Norris and Ronald Inglehart, *Cultural Backlash: Trump, Brexit and Authoritarian Populism* (Cambridge: Cambridge University Press, 2019); Ivor Crewe and David Sanders (eds), *Authoritarian Populism and Liberal Democracy* (Cham: Palgrave Macmillan, 2020).

[50] The allegations focus on the role of Cambridge Analytica: See the reports in: *The Observer,* 18 March 2018 and 21 July 2019.

political culture, one in which anonymous abuse was commonplace, and the adoption of extreme viewpoints was rewarded.[51] The appalling murder of the Labour MP Jo Cox during the referendum campaign by Thomas Mair, a far-right extremist, suggested that concerns over the impact of the campaign were not without foundation.

It is, though, important to recognise that Brexit represented a fruition of domestic political trends. The notion that referendums were inherently divisive, that populism was foreign to British politics, or even a consequence of social media's influence, suggests a curious myopia about British political history. For Nick Clegg, the pro-Remain former Liberal Democrat leader who had been Deputy Prime Minister between 2010 and 2015, the referendum had seen 'the political stability, legal reliability and economic openness which have marked out Britain as a global leader … casually cast aside'.[52] But this represents only a different version of the exceptionalism considered characteristic of the Leave campaign, often accused of pedalling various myths regarding the Second World War and the Empire.[53] To see the UK as having been uniquely stable, its politics measured and rational, is to accept uncritically a version of British history that is hardly unpolitical; it exposes too a certain naïveté, not least in regard to Northern Ireland, which, as Brexit has confirmed, remains an eternal learning curve for British politicians.[54]

Constitutional referendums do reduce complex issues to binary choices; they can, as Stephen Tierney has recognised, lead to the creation of political identities, a 'framing of the collective self'.[55] And in the case of Brexit, the narrowness of the result produced two

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[51] For a discussion of this phenomenon, see: Richard Seymour, *The Twittering Machine* (London: The Indigo Press, 2019).
[52] *Financial Times*, 24 June 2016. After losing his seat in 2017, Clegg joined Facebook as head of Global Affairs and Communication.
[53] Fintan O'Toole, *Heroic Failure: Brexit and the Politics of Pain* (London: Head of Zeus, 2018); Danny Dorling and Sally Tomlinson, *Rule Britannia: Brexit and the End of Empire* (London: Biteback, 2019).
[54] On the creation of these stereotypes, see: Jon Lawrence, 'Forging a Peaceable Kingdom: War, Violence, and Fear of Brutalization in Post-First World War Britain' (2003) 75(3) *The Journal of Modern History* 557-89.
[55] Stephen Tierney, *Constitutional Referendums: The Theory and Practice of Republican Deliberation* (Oxford: Oxford University Press, 2012), p. 16.

competing political identities. Even so, the 2016 referendum did not mark the introduction of a new populism in which the mandate of the majority would be pitted against a pro-Remain parliament. The divergence in opinion between the electorate and their representatives was a notable difference from previous referendums held in the UK. But populist rhetoric, and the attempt by politicians, often themselves from elite backgrounds, to claim that they represented the people against an establishment conspiring against the true interests of the nation was scarcely unknown in British politics. Certainly, in the late 1960s and 1970s, the anti-immigration rhetoric of Enoch Powell rested upon a powerful sense that the people had been betrayed by their representatives.[56] Similarly, the turn to the right by the Conservatives in the late 1970s under the leadership of Margaret Thatcher evinced certain populist elements.[57] The referendum gave political authority to a tendency long latent within British politics.

The true significance of the referendum lay in two other areas. First, as with the 2014 poll on Scottish independence and Jeremy Corbyn's election as Labour leader a year later, it signalled a reversal of decades of declining political engagement, as indicated by falling levels of turnout and party membership.[58] However uncomfortable aspects of the referendum campaign were, it clearly represented a significant moment of repoliticisation, drawing formerly disengaged voters back into politics. Just as the events of 2014 had created a new Scottish politics orientated around the constitution, 2016 reshaped English (and, to a lesser extent, Welsh) politics. Brexit, in this regard, was never simply about the UK's relationship with Europe; rather, it has come to represent a certain outlook on a range of social, economic and cultural questions. The degree of change in an English context may seem less dramatic,

[56]Bill Schwarz, *The White Man's World* (Oxford: Oxford University Press, 2011); Camilla Schofield, *Enoch Powell and the Making of Postcolonial Britain* (Cambridge: Cambridge University Press, 2013).
[57]Stuart Hall, 'The Great Moving Right Show' (January 1979) *Marxism Today* 14-18.
[58] Peter Mair, *Ruling the Void: The Hollowing of Western Democracy* (London: Verso, 2013).

since the Conservatives have remained in office throughout this period. Nevertheless, beneath party labels, there has been an important shift. Brexit has allowed the Conservative Party to reassert its leadership of the political right, at the cost of marginalising pro-European, socially liberal opinion within the party. Brexit was, though, from the perspective of the right, a way of resolving extant tensions: it did not create them.

Second, Brexit gave political expression to increasingly important social divisions. Between 2016 and 2019 it appeared that the British electorate was fractured along generational lines, with younger, Labour-leaning, pro-EU voters being outvoted by older, more Conservative, pro-Brexit electors. Various explanations can be posited: the rise of university attendance among recent generations; changing social attitudes; falling rates of home ownership. One of the more suggestive analyses has been offered by David Runciman, who has argued that in recent decades electorates in established democracies have come increasingly to resemble their elected representatives. For the majority of the twentieth century politicians were older than their electorates, and far more likely to have attended university: this is no longer the case.[59] The result has been a growing rejection of the very principle of representation, and a growth in support for direct forms of popular political participation such as referendums. Representation, paradoxically, might require that representatives and their constituents be unalike: if politicians were no longer more experienced, or more educated, than the wider public, then their legitimacy was open to question. Indeed, one way of understanding Brexit might be as part of a broader collapse of political authority: if the public was less willing to respect the wisdom of elected politicians, then the course of Labour and Conservative politics in this period would suggest that the same could be said for party members and even backbench parliamentarians. Between 2016

[59] For various versions of the argument, see: David Runciman, *How Democracy Ends* (London: Profile, 2018) and 'Why is democracy so surprising?' (2019) 90(S1) *Political Quarterly* 36-46. A clear exposition is available as a short lecture at: https://www.talkingpoliticspodcast.com/blog/2018/129-democracy-for-young-people

and 2019, the deference traditionally accorded to party bureaucracies and leaderships was barely visible; the notable exception in this regard was within the SNP, where, for all the party's commitment to constitutional change, the old tenets of party discipline still held.

Conclusion

Despite the profound constitutional consequences of the referendum result, Brexit was, at root, primarily a political event, a high political effort to resolve tensions formed by social and economic changes that had taken place over decades. This is not to suggest that Brexit was inevitable: the decision to hold a referendum, the context in which it was held, and the weakness of the Remain campaign were all necessary contingencies. But underlying economic and political shifts created an environment in which those short-term factors mattered. Most obviously, the financial crash of 2008-9 left a legacy of stagnant wages and precarious employment that eroded faith in the political establishment and ensured that the Remain campaign's warnings regarding the likely economic impact of Brexit lacked credibility with much of the public.[60] Further, as David Edgerton has contended, the transformation of the Conservatives into the party of Brexit, in opposition to the wishes of much of the business community, reflected the fact that key sectors of the British economy, particularly financial services, were, since the 1980s, increasingly international in focus and under foreign ownership.[61] This created a disconnect between the political and economic spheres, while simultaneously contributing to the popular desire to 'take back control' that was central to the Leave victory in 2016.

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[60] Thompson, 'Inevitability and Contingency'; Matthew Watson, 'Brexit, the left behind and the let down: the political abstraction of "the economy" and the UK's EU referendum' (2018) 13(1) *British Politics* 17-30.
[61] David Edgerton, 'How Britain was sold', *New Statesman* 13 November 2019 https://www.newstatesman.com/politics/uk/2019/11/how-britain-was-sold

Equally, in political terms, Brexit reflected the growth of a right-leaning English political identity, the strength of which had been obscured by divisions over Europe. The triumph of the Leave campaign allowed those splits to be resolved, and for the arrival of a new Conservative ascendancy in England. It is the dominant position of the Conservatives in England that provides the most striking political legacy of Brexit: at the 2019 election, the party polled 47 per cent in England, a figure that rises to 49 per cent outside London. In a functional, political sense, then, Brexit is over; it may have happened in a different way from how David Cameron intended, but the referendum still achieved its primary purpose of ending the threat posed by UKIP to the Conservative Party. This could be detected in the Conservative Party's 2019 slogan, 'Get Brexit Done': while in one sense this expressed a continued commitment to implementing the referendum result, it also spoke to a desire to move on, for politics to be about something else. The constitutional and economic consequences of Brexit are likely to make such a desire impossible to realise anytime soon.